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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JAMES,

Defendant and Appellant.

A154320

(Alameda County
Super. Ct. No. 160389)

Appellant Michael James appeals from the denial of his motion to withdraw plea and request for change of venue. James's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and/or *People v. Serrano* (2012) 211 Cal.App.4th 496 (*Serrano*), identifying no appellate issues and requesting this court review the record and determine whether any arguable issue exists on appeal. We have done so and, finding none, we affirm.

BACKGROUND¹

In 2007 and 2008, James was charged in a series of separate cases with various criminal offenses—including burglary (Pen. Code,² § 459), multiple counts of stalking (§ 646.9, subd. (b)), assault with a deadly weapon (§ 245, subd. (a)(1)), and grand theft

¹ We have previously reviewed this matter on two separate occasions and take our factual recitation from those prior opinions. (See *People v. James* (June 25, 2010, A124954, A126576) [nonpub. opn.] (*James I*); *People v. James* (May 11, 2011, A128559) [nonpub. opn.] (*James II*).)

² All statutory references are to the Penal Code unless otherwise specified.

(§ 487)—all arising out of the deterioration of his personal and professional relationship with the victim, a professor at the University of California, Berkeley. After the cases were consolidated, James entered a negotiated plea of no contest to one count of dissuading a witness from testifying (§ 136.1, subd. (c)(1)) in exchange for dismissal of the remaining charges filed against him. He was placed on felony probation and a 10-year stay away order was issued. (*James I, supra*, A124954.)

In June 2009, a petition to revoke probation was filed, alleging instances of continued stalking and harassment by James in violation of the restraining order. He was ordered to serve 120 days in county jail. In consolidated appeals from James's entry of his no contest plea and the trial court's subsequent probation violation order, we concluded that, as part of his plea, James waived his right to seek review of the probation conditions and dismissed the appeals. (*James I, supra*, A124954.) In April 2010, James's probation was revoked due to the commission of new criminal offenses and his previously suspended three-year prison term was imposed. We subsequently upheld the trial court's revocation determination. (*James II, supra*, A128559.) In September 2012, James filed a motion to withdraw his plea of no contest and request a change of venue from Alameda County Superior Court. The trial court denied the request for lack of jurisdiction, noting that the Legislature has not authorized postconviction motions to withdraw a plea or change venue. (§§ 1018, 1033, subd. (a).)

In August 2017, James again filed a motion to withdraw his 2009 plea in Alameda County Superior Court, alleging that he had been advised at the time of his plea that he was not pleading to a strike when, in fact, he was. In September 2017, he again requested a change of venue. Both matters were assigned to Judge Labowitz, an out-of-county judge who had previously been selected to hear James's criminal matters by the presiding

judge.³ On April 30, 2018, Judge Labowitz denied the request for change of venue, concluding that any possible prejudice to James had already been resolved by assignment of the pending motion to an out-of-county judge. Judge Labowitz further denied James's motion to withdraw his plea as untimely.

DISCUSSION

As stated above, James's appointed counsel filed an opening brief identifying no appellate issues and requesting that we review the record and determine whether any arguable issue exists on appeal. By letter dated October 18, 2018, counsel advised James he had 30 days to submit supplemental briefing raising any points, issues, or assignments of error he wanted us to consider. We have since received supplemental briefing from James, along with two other submissions attaching various documents.

Whether the protection afforded by *Wende* and the United States Supreme Court decision in *Anders v. California* (1967) 386 U.S. 738 apply to an appeal from a postjudgment order—after a defendant has had an opportunity to appeal the original conviction—remains an open question. Our Supreme Court has not spoken. The *Anders/Wende* procedures address appointed counsel's representation of an indigent criminal defendant in the first appeal as a matter of right and courts have been reluctant to expand their application to other proceedings or appeals. (See *Pennsylvania v. Finley* (1987) 481 U.S. 551; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Kisling* (2015) 239 Cal.App.4th 288; *Serrano, supra*, 211 Cal.App.4th 496.) Nonetheless, in the absence of published authority to the contrary, we believe it prudent to adhere to *Wende* in the present case, where counsel has already undertaken to comply with *Wende* requirements and defendant has been afforded an opportunity to file, and has in fact filed, supplemental briefing.

³ The record additionally discloses that in May 2015, the presiding judge recused the entire Alameda County Superior Court bench from hearing a civil action filed by James and the matter was reassigned to San Joaquin County.

Having undertaken an examination of the record, however, we find no arguable error that would result in a disposition more favorable to James. “On application of the defendant at any time before judgment *or within six months after an order granting probation is made if entry of judgment is suspended*, the court may, . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.” (§ 1018, italics added.) The italicized language above was added by the Legislature in 1991 (Stats. 1991, ch. 421, § 1, p. 2172) “ ‘in order to eliminate late withdrawal of pleas and the resultant jeopardy to the prosecution caused by the passage of time.’ ” (*People v. Superior Court (Rodas)* (2017) 10 Cal.App.5th 1316, 1323 (*Rodas*).) Given this legislative history, courts have deemed the “six-month time limit for withdrawing a guilty plea after an order granting probation with entry of judgment suspended mandatory rather than directory.” (*Id.* at p. 1324; see *People v. Miranda* (2004) 123 Cal.App.4th 1124, 1131–1133.)

We find *Rodas* dispositive of the matter before us. The appellate court determined that the trial court had exceeded its jurisdiction by granting a motion to withdraw an eight-year-old plea that had long since become final. (*Rodas, supra*, 10 Cal.App.5th at pp. 1320, 1324–1325.) In the present case, even if James had been improperly advised regarding the strike implications of his plea, and even if such error constituted good cause to withdraw his plea pursuant to section 1018, the trial court was without jurisdiction under section 1018 to grant his stale request.

This conclusion also disposes of any challenge to the trial court’s denial of James’s request for a change of venue. “ ‘On appeal, a defendant challenging the court’s denial of a change of venue must show both error and prejudice, that is, that it was not reasonably likely the defendant could receive a fair trial at the time of the motion, and that it is reasonably likely he did not in fact receive a fair trial.’ ” (*People v. Rices* (2017) 4 Cal.5th 49, 72.) Assuming without deciding a request for change of venue was permissible at this juncture, James cannot show prejudice because the trial court had no

discretion to do anything but deny his withdrawal motion as untimely. (*Rodas, supra*, 10 Cal.App.5th at pp. 1323–1325.)

Finally, nothing in James’s supplemental submissions changes this analysis. It is evident James believes he was improperly charged with the offenses which resulted in his 2009 plea. He also has concerns about various collateral matters, such as his continued failure to have certain seized computer equipment and other property returned to him. Our review, however, is necessarily limited to the April 2018 orders challenged in James’s notice of appeal. James’s previous appeals were not requests to withdraw his plea and did not raise the advisement error he now asserts. To the extent he previously requested his plea be withdrawn, either on that basis or on other grounds, those matters are not before us.

DISPOSITION

The judgment is affirmed.

Sanchez, J.

WE CONCUR:

Humes, P. J.

Banke, J.